

# Contractor Human Resources Management



## Guiding Principles

To ensure DOE contractors manage their Human Resource programs to:

- Support the DOE mission,
- Promote workforce excellence,
- Champion work force diversity,
- Achieve effective cost management performance, and
- Comply with applicable laws and regulations.

[References: [DOE Order 350.1](#), [DOE Order 350.3](#)]

## 1.0 Summary of Latest Changes

This update reflects that DOE Order 350.1 was separated into two orders:

- (1) DOE O 350.1: Contractor Human Resource Management Programs; and
- (2) DOE O 350.3: Labor Standards Compliance, Contractor Labor Relations, and Contractor Workforce Restructuring Programs.

## 2.0 Discussion

This chapter supplements other more primary acquisition regulations and policies contained in the references above and should be considered in the context of those references. This chapter does not cover efforts and projects performed for DOE by other Federal agencies.

## 2.1 Contractor Human Resources

Contractors that manage the Department's facilities have significant numbers of employees necessary for the operation of Department of Energy (DOE) sites and facilities. The Human

Resource issues which arise are complex and extremely sensitive, and can create a potentially significant cost to the Department.

This chapter covers subjects set forth in DOE O 350.1 and DOE O 350.3. Those subjects include:

- Advance understandings on cost (retirement programs, risk management, and insurance);
- Labor standards;
- Work force restructuring; and
- Labor relations.

## **2.2 Advance Understandings on Cost**

This section provides information related to the roles and responsibilities of both Departmental elements and individuals involved in and responsible for:

- Oversight of DOE Management and Operation (M&O) and other facility operation contracts that provide cost reimbursement for contractor human resource programs;
- Determination of allowability and reasonableness of contractor employee compensation and related human resource costs; and
- Measurement and evaluation of the effectiveness of contractor human resource management in recruiting, deploying and retaining a reasonably priced workforce to meet DOE mission objectives.

The Department reaches advance understandings on contractor human resource costs (personnel appendices) in M&O and other facility operation contracts for which it reimburses those costs to:

- Determine allocability, allowability, and reasonableness of costs prior to incurrence, thereby avoiding subsequent disallowances and disputes;
- Provide appropriate and reasonable compensation levels to recruit and retain contractor employees to meet DOE mission objectives; and
- Assure prudent expenditures of public funds.

Generally, an advance understanding on contractor human resource costs is needed when:

- Policies are established specifically for contract work;
- The contractor's work is predominantly or exclusively made up of negotiated Government contract work;
- Contract work is so different from the organization's private sector contract work that existing established policies cannot reasonably be extended to and consistently applied on contract work;
- Established policies proposed for contract work are not sufficiently definitive to permit a clear advance mutual understanding of allowable costs and to provide a basis for audit;

- The contractor's personnel policies, programs, and practices must be revised or disallowed to comply with DOE policies; or
- The contractor does not have written policies/procedures.

### **2.3 Negotiating an advance understanding**

At the beginning of the acquisition cycle a Request for Proposal may include specific requirements for contractor human resource management programs to be applied by the winning contractor. The pre-negotiation package is the precursor to the advance understanding on contractor human resource costs. Allowable Human Resource costs need to be described, but avoid process and/or transactional requirements that do not directly affect the allowability of Human Resource costs. Include the standards and methods for control of compensation increase funds, as well as comparators (benchmarks). The contractor will use those to establish, adjust, and evaluate Human Resource costs during the contract term.

Two basic methods which DOE uses to achieve and record advance understandings with its contractors:

1. Negotiation of an advance understanding (personnel appendix) to the contract, which sets forth the policies, programs, and practices accepted by the Department as items of allowable cost or as the basis for determining the allowability of human resource costs; or
2. Review of, and agreement with established policies, programs, and schedules (and any changes thereto during the contract term) applicable to the contractor's private operations that are acceptable for contract work and which are consistently and uniformly followed throughout the contractor's organization.

### **2.4 Model H Clause**

Most advance agreements to date have followed the format of the Model H Clause, which contains sections for an introduction, definitions, compensation/pay programs, welfare benefits, retirement programs, paid time off, Employee Assistance Program (EAP) sections, and other sections necessary to deal with specific major items of allowable cost. If you have questions regarding the Model H Clause, contact the Contractor Human Resources Policy Division (MA-612).

### **2.5 Reasonableness of Contractor Human Resource Costs.**

Evaluating the reasonableness of contractor human resource costs:

- The contractor's competitive labor market;
- The significance of Government contracting on the labor market;
- Whether the workforce is represented by one or more unions;

- The impact of the contractor's private operations (to the extent a contractor has private, non-DOE, operations);
- DOE acceptance of reasonableness findings of other federal agencies; and
- The extent to which contractor human resource costs are based upon valid survey data, and generally conform to policies and practices of the industry with which the contractor is identified in its private operations.

If an organization exists solely to perform DOE work under a cost type contract (for example, Limited Liability Companies), little financial incentive for, or experience in, exercising prudent business judgement in contractor human resource areas may exist. In such instances, DOE guidance to contractors on business management performance expectations and measures to evaluate reasonableness of such costs, and the importance of the valid application of the metrics in this section, become even more important.

The contract administration team must work in close coordination because of the:

- Magnitude of human resource costs, as a percentage of overall contract cost and as a dollar amount;
- Cost and volatility of retiree pension and medical benefits and associated long term liabilities;
- Increasing costs of health care;
- Technical, legal, and regulatory requirements under which contractor human resource programs must operate; and
- Socio-political environment in which the Department operates.

## **2.6 Risk Management and Insurance**

Risk Management:

The Department has risks or potential liabilities or exposures in every business or activity. Risk management is the process of analyzing and identifying potential risks or liabilities associated with a business or activity processes or procedures. The Department must determine the best method to eliminate, reduce, and/or finance those risks or potential liabilities. Risks that cannot be eliminated or significantly reduced can result in potential financial liabilities that must be accepted or transferred to another entity.

Insurance:

Federal Acquisition Regulation (FAR) 28.3 and Department of Energy Acquisition Regulation (DEAR) 928.3 discuss Government policies and procedures regarding insurance. Insurance is the most common, readily available, and identifiable method to transfer a risk or potential financial liability to another entity.

Insurance is an appealing remedy and works because insurance companies can provide, for a relatively reasonable fee (premium), a significantly large financial liability coverage amount. Insurance companies can provide this normally cost effective service because of the theory of large numbers and associated risk analysis (projected losses for the risk exposure). The premiums, from a very large number of people or businesses with similar risk exposures, are held in reserve and invested to use in paying for actual covered losses as they occur.

The insurance company accepts the risk and financial liability and makes any required financial restitution. Consequently, this indemnifies the insured against financial loss resulting from the covered risk after meeting deductibles and co-pays. The premium is a pro-rated allocation to the “large number” of insured for all potential financial losses projected to occur, even if these losses do not occur, plus all of the insurance company’s administrative direct and indirect expenses, and profit. In theory, the larger the number of those insured, the smaller the premium.

## **2.7     The Department’s Alternative to Commercial Insurance**

Commercial insurance under M&O and facility contracts:

Because our M&O site and facility contractors are few in number and, have rather unique and in some cases extreme and classified risks or potential liabilities, they are not offered the same cost savings and risk sharing opportunities provided normal commercial operations. The FAR recognizes a contractor’s potential exposure and responsibility for potential liabilities, and allows contractors to charge, under certain circumstances, insurance and insurance type expenses to a contract.

Under extraordinary emergencies as granted by Public Law (Pub. L.) 85-804, as amended by Pub. L. 93-155 (50 U.S.C. 1431-1435), DOE is allowed to indemnify contractors from certain risk and costs. FAR Part 50 prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate various indemnifications.

Using the FAR’s general contract authority and as further discussed at DEAR 950.71, DOE may enter into indemnity agreements with its contractors. Indemnities give contractors some limited risk and liability protection. The Department’s assumption of liability will be expressly limited to the availability of appropriated funds placed on the contract. DOE’s policy also limits these agreements to liabilities for nuclear incidents that may not be otherwise covered by a statutory indemnity, and for uninsured non-nuclear risks.

Subject to certain limitations, the DOE, under FAR 52.250-1, indemnifies contractors with respect to unusually hazardous or nuclear risks against:

- Claims by third persons for death; personal injury; or loss of, damage to, or loss of use of property;
- Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and

- Loss of, damage to, or loss of use of Government property, excluding loss of profit.

Types of insurance that should not be approved:

Contractors can rely on the Department to compensate for certain types of insurance, but may not always perform the most critical analysis of the types of coverage appropriate for their need. This can lead to their purchase of special insurance coverages that may not be necessary or in the Department's best interest. These coverages, to the extent they protect and benefit the contractor, but provide limited or no protection or benefit for the Department, should not be approved. Examples of the type of coverage that should not be approved include Directors' and Officers' liability insurance and other forms of professional liability insurance.

## **2.8 Workforce Restructuring**

The Department has the responsibility to ensure contractors pursue the application of best business practices to promote efficiency and to ensure contractor workforce restructuring actions are conducted in a manner that minimizes the impact on programmatic activities. The Department has a responsibility to ensure fair treatment of workers when restructuring of the contractor work force is required and perform workforce planning that provides for the continued availability of critical knowledge, skills, and abilities required for the Department's mission.

Section 3161 of the National Defense Authorization Act of 1993, sets forth specific requirements and objectives to be followed when workforce changes occur at defense nuclear facilities. Secretarial policy and DOE O 350.3 extends these objectives to all DOE contractor workforce restructuring.

The purpose of the requirements pertaining to workforce restructuring are to:

- Minimize involuntary separations;
- Ensure contractor workforce restructuring actions are conducted in a manner that minimizes the effect on programmatic activities;
- Ensure contractors provide reasonable notice to employees, their representatives, public officials, and other stakeholders of necessary reductions in contractor employment;
- Facilitate workforce planning by Department contractors;

Workforce restructuring is based on a general plan developed by DOE for a site consistent with the objectives and requirements of Section 3161. When separations are required, the contractor develops a specific plan indicating which job classifications will be reduced, how workers will be selected, including both voluntary and involuntary processes, and what separation benefits those contractor employees will receive. Practical experience in this sensitive area demonstrates the critical importance of ongoing communication and consultation between the contractor, field organizations, affected programs, legal counsel, and the Office of the Assistant General Counsel for Contractor Human Resources (GC-63). DOE's contracts also include provisions governing

how the existing workforce will be treated in terms of hiring, bargaining recognition, and compensation if there is a change in contractors.

## **2.9 Labor Relations**

This section provides information to the contract administration team members about the DOE's policy on labor-management relations and the roles and responsibilities of DOE and its contractors.

The extent of Government ownership of plant and materials, and the overriding concerns of national defense and security, impose special conditions on labor organizations representing the contractor employees. DOE retains absolute authority on all questions of security and security rules, including the administration of security.

FAR 22.101-1 requires agencies to remain impartial concerning any dispute between labor and contractor management and that agency personnel must not undertake the conciliation, mediation, or arbitration of a labor dispute. Furthermore, DOE must not take a public position concerning the merits of a labor dispute between a contractor and its employees or organizations representing those employees.

Although DOE is not a party to the contractual relationship between contractor and union, it does have an oversight responsibility. This ensures that contractors pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.

The Contractor shall consult with DOE prior to contract negotiations with respect to the economic parameters for bargaining and during the term of a collective bargaining agreement on matters that may have a significant impact on work rules or past customs and practices. The contracting officer, in consultation with the Head of Contracting Activity, will approve or disapprove the contractor's proposed economic bargaining parameters for cost reimbursement purposes.

The Office of the Assistant General Counsel for Contractor Human Resources (GC-63) has staff expertise to assist in answering questions and determining what actions, if any, DOE may wish to consider with regard to contractor labor relations.